

U.S. District Court

Eastern District of Wisconsin

I hereby certify that this is a
true and correct copy of the original
now remaining of record in my
office.

DAVID E. JONES
U.S. Magistrate Judge

DATED: 4-10-19
By: SJ

UNITED STATES DISTRICT COURT

for the
Eastern District of Wisconsin

In the Matter of the Search of:

information associated with Facebook User ID:
100007248372365 and Facebook URL:
<https://www.facebook.com/edwardo.bernardo.5>, that is
more fully described in Attachment A

Case No.

19-M-050

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property:

See Attachment A.

located in the Eastern District of Wisconsin, there is now concealed:

See Attachment B.

The basis for the search under Fed. R. Crim P. 41(c) is:

- evidence of a crime;
- contraband, fruits of crime, or other items illegally possessed;
- property designed for use, intended for use, or used in committing a crime;
- a person to be arrested or a person who is unlawfully restrained.

The search is related to violations of:

Title 18 United States Code § 844(i), 922(g)(1) and 924(a)(2)

The application is based on these facts: See attached affidavit.

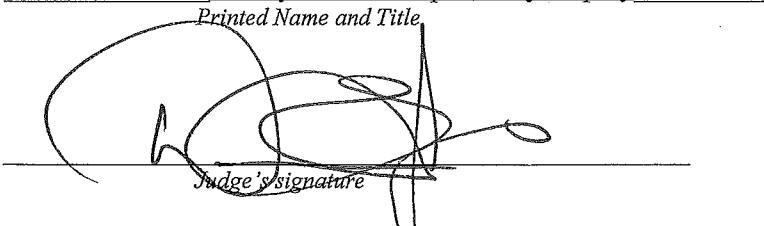
- Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.



Applicant's signature

Jeremy Loesch, Supervisory Deputy

Printed Name and Title



Judge's signature

David E. Jones

U.S. Magistrate Judge

Printed Name and Title

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, Jeremy Loesch, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant for information associated with a certain Facebook account that is stored at premises owned, maintained, controlled, or operated by Facebook Inc. ("Facebook"), a social networking company headquartered at 1601 Willow Road Menlo Park, California 94025. The information to be searched is described in the following paragraphs and in Attachment A as;

Facebook URL: <https://www.facebook.com/edwardo.bernardo.5>
Facebook User ID: 100007248372365

2. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Facebook to disclose to the government records and other information in its possession, pertaining to the subscriber or customer associated with the Facebook account.

3. I am currently employed as a Supervisory Deputy for the U.S. Marshals Service. I have been employed as a law enforcement officer for 16 years. As a part of my duties, I investigate violations of federal and state laws including those relating to fugitives. The facts in this affidavit come from my personal observations, my training and experience, and information obtained from other Deputies, Police Officers, Agents and witnesses. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of Title 18 United States Code § 844(i),

922(g)(1) and 924(a)(2), have been committed by Edward B. Burgess (hereinafter Burgess).

There is also probable cause to search the information described in Attachment A for evidence of these crimes as described in Attachment B.

PROBABLE CAUSE

5. On December 7, 2018, at approximately 1:33pm Milwaukee Police Department Officers were dispatched to XXXX N. 28th St. #A Milwaukee, WI for a Battery, Domestic Violence complaint. The original Computer Aided Dispatch (CAD) records sent to the responding officers read, "CALLER STATED SOMEONE THERE IS HURTING HER AND HAS A GUN../ SUBJ PUNCHED HER IN THE FACE...MEDICAL REFUSED."

6. The responding Officers made contact with T.H. who stated that Burgess had struck her in the face with a closed fist numerous times and had pointed a gun at her before fleeing the residence. T.H. identified the handgun as a small black semi-automatic handgun that Burgess carries in his waistband.

7. On December 7, 2018, at approximately 9:07pm Milwaukee Police Department Officers were dispatched to XXXX N. 28th St. Milwaukee, WI for a residential fire. Milwaukee Fire Department Investigator Heinowsky declared the fire suspicious.

8. During their follow up investigation of the fire Milwaukee Police Officers made contact with T.H. who showed the Officers text messages she received from Burgess prior to her residence being lit on fire. Some notable text messages include,

"I burning that bitch down and i dont care what happens next"

"ima kill you im not playing"

"Ima kill who ever else in my way"

"Watch the news im not playing out here"

“But h fuck you ima show you nkw”

“Itch watch you grow up watch bitch”

“Tonight oms watch on my son watch”

“Ima show yo dumb ass”

“Bitch watch on my life show the police”

“Fuck you n them kids”

9. Efforts by the Milwaukee Police Department on December 7, 2018 and thereafter to locate Burgess have been unsuccessful.

10. On December 20, 2018, Burgess was charged by Criminal Complaint in Milwaukee County Circuit Court, case number 2018CF5976 with Battery in violation of Wis. Stat § 940.19(1) with modifiers of Habitual Criminality Repeater and Domestic Abuse Assessments in violation of Wis. Stats § 939.62(1)(a) and 973.055(1), Disorderly Conduct in violation of Wis. Stat § 947.01(1) with modifiers of Habitual Criminality Repeater, Domestic Abuse Assessments and Use of a Dangerous Weapon in violation of Wis. Stats § 939.62(1)(a), 973.055(1), 939.63(1)(a) and Arson of a Building w/o Owner’s Consent in violation of Wis. Stat § 943.02(1)(a) with modifiers of Habitual Criminality Repeater and Domestic Abuse Assessments in violation of Wis. Stats § 939.62(1)(a) and 973.055(1) and a warrant issued for his arrest.

11. On February 27, 2019, Burgess was charged by Indictment in United States District Court for the Eastern District of Wisconsin with Arson in violation of Title 18 United States Code § 844(i) and Possession of a Firearm by a Felon in violation of Title 18 United States Code § 922(g)(1) and 924(a)(2) and a warrant issued for his arrest.

12. On March 14, 2019, the Bureau of Alcohol Tobacco and Firearms requested the assistance of the U.S. Marshals in locating and arresting Burgess on his Milwaukee Police Department and Federal arrest warrants.

13. On March 25, 2019, I conducted an open search of social media website Facebook.com in an attempt to locate a Facebook page for Burgess. I located an account with the profile name associated with Facebook page Edwardo Bernardo Dinero, with a URL and User ID of,

Facebook URL: <https://www.facebook.com/edwardo.bernardo.5>
Facebook User ID: 100007248372365

14. Photos observed in the Facebook.com account were compared to Burgess' Wisconsin driver's license photo and found to be the same person.

15. To date, all efforts to locate Burgess have been unsuccessful. At present, he has successfully evaded law enforcement and remains at large.

16. Facebook owns and operates a free-access social networking website of the same name that can be accessed at <http://www.facebook.com>. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

17. Facebook asks users to provide basic contact and personal identifying information to Facebook, either during the registration process or thereafter. This information may include the user's full name, birth date, gender, contact e-mail addresses, Facebook passwords, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Facebook also assigns a user identification number to each account.

18. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a “Friend Request.” If the recipient of a “Friend Request” accepts the request, then the two users will become “Friends” for purposes of Facebook and can exchange communications or view information about each other. Each Facebook user’s account includes a list of that user’s “Friends” and a “News Feed,” which highlights information about the user’s “Friends,” such as profile changes, upcoming events, and birthdays.

19. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create “lists” of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.

20. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post “status” updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming “events,” such as social occasions, by listing the event’s time, location, host, and guest list. In addition, Facebook users can “check in” to particular locations or add their geographic locations to their Facebook posts, thereby revealing their geographic locations at particular dates and times. A particular user’s profile page also includes a “Wall,” which is a space where the user

and his or her “Friends” can post messages, attachments, and links that will typically be visible to anyone who can view the user’s profile.

21. Facebook allows users to upload photos and videos, which may include any metadata such as location that the user transmitted when s/he uploaded the photo or video. It also provides users the ability to “tag” (i.e., label) other Facebook users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link to see the photo or video. For Facebook’s purposes, the photos and videos associated with a user’s account will include all photos and videos uploaded by that user that have not been deleted, as well as all photos and videos uploaded by any user that have that user tagged in them.

22. Facebook users can exchange private messages on Facebook with other users. Those messages are stored by Facebook unless deleted by the user. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. In addition, Facebook has a chat feature that allows users to send and receive instant messages through Facebook Messenger. These chat communications are stored in the chat history for the account. Facebook also has Video and Voice Calling features, and although Facebook does not record the calls themselves, it does keep records of the date of each call.

23. If a Facebook user does not want to interact with another user on Facebook, the first user can “block” the second user from seeing his or her account.

24. Facebook has a “like” feature that allows users to give positive feedback or connect to particular pages. Facebook users can “like” Facebook posts or updates, as well as webpages or content on third-party (*i.e.*, non-Facebook) websites. Facebook users can also become “fans” of particular Facebook pages.

25. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.

26. Each Facebook account has an activity log, which is a list of the user's posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through the account, such as "liking" a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user's Facebook page.

27. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

28. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications ("apps") on the Facebook platform. When a Facebook user accesses or uses one of these applications, an update about that the user's access or use of that application may appear on the user's profile page.

29. Facebook also retains Internet Protocol ("IP") logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a Facebook profile, that user's IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

30. Social networking providers like Facebook typically retain additional information about their users' accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may

communicate directly with Facebook about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications, including records of contacts between the user and the provider's support services, as well as records of any actions taken by the provider or user as a result of the communications.

31. As explained herein, information stored in connection with a Facebook account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a Facebook user's IP log, stored electronic communications, and other data retained by Facebook, can indicate who has used or controlled the Facebook account. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, profile contact information, private messaging logs, status updates, and tagged photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the Facebook account at a relevant time. Further, Facebook account activity can show how and when the account was accessed or used. For example, as described herein, Facebook logs the Internet Protocol (IP) addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Facebook access, use, and events relating to the crime under investigation. Additionally, Facebook builds geo-location into some of its services. Geo-location allows, for example, users to "tag" their location

in posts and Facebook “friends” to locate each other. This geographic and timeline information may tend to either inculpate or exculpate the Facebook account owner. Last, Facebook account activity may provide relevant insight into the Facebook account owner’s state of mind as it relates to the offense under investigation. For example, information on the Facebook account may indicate the owner’s motive and intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement).

32. Therefore, the computers of Facebook are likely to contain all the material described above, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and other account information.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

33. I anticipate executing this warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the warrant to require Facebook to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

CONCLUSION

34. Based on the forgoing, I request that the Court issue the proposed search warrant.

35. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) &

(c)(1)(A). Specifically, the Court is a district court of the United States . . . that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

36. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this warrant.

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with Facebook User ID:
100007248372365 and Facebook URL: <https://www.facebook.com/edwardo.bernardo.5>, that is stored at premises owned, maintained, controlled, or operated by Facebook Inc., a company headquartered in Menlo Park, California.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Facebook

To the extent that the information described in Attachment A is within the possession, custody, or control of Facebook Inc. ("Facebook"), regardless of whether such information is located within or outside of the United States, including any messages, records, files, logs, or information that have been deleted but are still available to Facebook, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Facebook is required to disclose the following information to the government for each user ID listed in Attachment A:

- (a) All contact and personal identifying information, including: full name, user identification number, birth date, gender, contact e-mail addresses, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers.
- (b) All activity logs for the account and all other documents showing the user's posts and other Facebook activities from December 7, 2018 to the date of this request;
- (c) All photos and videos uploaded by that user ID and all photos and videos uploaded by any user that have that user tagged in them from December 7, 2018 to the date of this request, including Exchangeable Image File ("EXIF") data and any other metadata associated with those photos and videos;
- (d) All profile information; News Feed information; status updates; videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends' Facebook user identification numbers; groups and networks of which the user is a member, including the groups' Facebook group identification

- numbers; future and past event postings; rejected “Friend” requests; comments; gifts; pokes; tags; and information about the user’s access and use of Facebook applications;
- (e) All records or other information regarding the devices and internet browsers associated with, or used in connection with, that user ID, including the hardware model, operating system version, unique device identifiers, mobile network information, and user agent string;
- (f) All other records and contents of communications and messages made or received by the user from December 7, 2018 to the date of this request, including all Messenger activity, private messages, chat history, video and voice calling history, and pending “Friend” requests;
- (g) All “check ins” and other location information;
- (h) All IP logs, including all records of the IP addresses that logged into the account;
- (i) All records of the account’s usage of the “Like” feature, including all Facebook posts and all non-Facebook webpages and content that the user has “liked”;
- (j) All information about the Facebook pages that the account is or was a “fan” of;
- (k) All past and present lists of friends created by the account;
- (l) All records of Facebook searches performed by the account from December 7, 2018 to the date of this request;
- (m) All information about the user’s access and use of Facebook Marketplace;
- (n) The types of service utilized by the user;

- (o) The length of service (including start date) and the means and source of any payments associated with the service (including any credit card or bank account number);
- (p) All privacy settings and other account settings, including privacy settings for individual Facebook posts and activities, and all records showing which Facebook users have been blocked by the account;
- (q) All records pertaining to communications between Facebook and any person regarding the user or the user's Facebook account, including contacts with support services and records of actions taken.